who assembled for general discussion of legal questions. The section on Criminal Law took up the following question: In what way is it urgent to reform the criminal codes in respect to criminal responsibility in order to bring the theory of the law into accord with the doctrines of modern psychology, criminal anthropology, etc., and at the same time to satisfy the necessity of giving society all possible security against criminals? Their conclusions were embodied in three resolutions, which were approved by a majority of the General Assembly: —

1. Penal laws ought to provide not only for the insane, but for those delinquents who, without being absolutely mad, nevertheless are not entirely responsible for their actions.

2. The delinquent who has been shown by medical examination and all other legal means to be absolutely mad, should be confined for life in a hospital or asylum.

3. Those who, though not absolutely mad, are yet partly irresponsible and dangerous, should be tried and temporarily confined in places designed for them.[1]

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

AGENCY — EXCLUSIVE AGENCY TO SELL. — An exclusive agency to sell merely prohibits the appointment of another agency for the sale of the property, but does not prevent the owner himself from making a sale. *Dole* v. *Sherwood et al.*, 43 N. W. Rep. 569 (Minn.).

CONFLICT OF LAWS — ASSIGNMENT FOR BENEFIT OF CREDITORS. — In an assignment for the benefit of creditors, made in Dakota, where preference is allowed, by a resident of Minnesota, a policy of insurance on property in Dakota, which had been destroyed by fire, passed to a creditor in Minnesota, where preference is not allowed. *Held*, the assignment, being of a claim owned by a citizen of Minnesota, though good in Dakota, where it was made, is not good in Minnesota, being contrary to her laws. There are exceptions to the rule that an assignment, if valid where made, is valid anywhere. *In re Dalplay*, 43 N. W. Rep. 564 (Minn.).

CONSPIRACY — COMBINATION TO KEEP UP RATES OF FREIGHT — RIGHTS OF COMPETITORS. — The defendants were firms of ship-owners trading between China and Europe. With a view to obtaining for themselves a monopoly of the homeward tea trade, and thereby keeping up the rate of freight, they formed themselves into an association, and offered to such merchants and shippers in China as shipped their tea exclusively in vessels belonging to members of this association a rebate of 5 per cent. on all freights paid by them. They also reduced rates much below a remunerative standard in order to drive outside ship-owners from the field. The plaintiffs, who were rival ship-owners, trading between China and Europe, were excluded by the defendants from all benefits of the association, and in consequence of such exclusion sustained damage. *Held* (by Bowen and Fry, L. JJ., Lord Esher, M. R., dissenting), affirming the judgment of Lord Coleridge, C. J., that the association being formed by the defendants with the view of keeping the trade in their own hands, and not through any personal motive or ill-will towards the plaintiffs, was not unlawful, and that no action for conspiracy was maintainable. *Mogul Steamship Co.* v. *McGregor, Gow, & Co.*, 23 Q. B. D. 598 (Eng.).

This case is interesting for the light which all the opinions throw upon the important question of the rights of trade combinations. Lord Esher, in his dis-

1 Bulletin de Législation Comparée, 20ième année, no. 7, p. 732.

senting opinion, maintains that the defendants' agreement being in restraint of trade was illegal; that the entering into the agreement was therefore an indictable conspiracy; and that, furthermore, the act of the defendants in lowering their freights so far below the remunerative point was not an act of fair trade competition, and was therefore a wrongful act as against the plaintiffs. But the other Lords Justices took the opposite view, declaring that such agreements in restraints of trade were *prima facie* void only, and not illegal in the sense of being indictable offences; that entering into them, therefore, did not constitute a conspiracy; and that "competition, however severe and egotistical, if unattended by circumstances of dishonesty, intimidation, molestation, or such illegalities, ... gives rise to no cause of action at common law." Or, as Fry, L. J., expresses it "mere competition, ... carried on for the purpose of gain, and not out of actual malice, is not actionable, even though intended to drive the rival in trade away from his place of business, and though that intention be actually carried into effect."

CONSTITUTIONAL LAW — POLICE POWERS. — Act N. Y. 1888, c. 581, § 1, fixes the maximum charge for receiving, etc., grain by means of elevators, and for part of the work fixes "the actual cost" as the maximum charge. The act is restricted to cities of not less than a certain population. *Held*, that the business of elevating grain is of such public interest that this act is within the police power of the State, and does not deprive elevator-owners of property without due process of law. Gray and Peckham, JJ., dissenting. *People* v. *Budd*, 22 N. E. Rep. 670, (N. Y.).

CONTRACTS — CONFLICT OF LAWS. — A contract was made in Boston between a citizen of the United States and an English company, for the transportation of cattle from Boston to Liverpool. By the terms of the contract the company was to be exempt from liability for loss by the negligence of its servants. By the law of Massachusetts and the United States this stipulation was invalid; but by the law of England it was valid *Held*, that although when a contract made in one country is to be performed wholly or partially in another, it will, as a general rule, be governed by the law of the place where it was made; yet, if it appears that the contracting parties had some other law in view, the court will enforce the contract according to that law. On the facts of this case the court held that the parties intended the contract to be governed by English law, and therefore the company was not liable. *In re Missouri Steamship Co.*, 42 Ch. D. 321.

The court refer to the case of the *Liverpool Steam Co.* v. *Phenix Ins. Co.*, 129 U. S. 397. The facts of the two cases were almost identical, but the Supreme Court of the United States reached the opposite result The court proceeded on the same general principle, but could see in the facts no sufficient reason for changing the ordinary rule that the law of the place where the contract is made is to govern.

CONTRACTS — PUBLIC POLICY — ILLEGALITY. — A combination to raise the price of an article of prime necessity, *e. g*, wheat, is illegal at common law; and money advanced in prosecuting such illegal purpose cannot be recovered. *Samuel et al.* v. *Oliver et al.*, 22 N. E. Rep. 499 (Ill.).

CRIMINAL LAW — JURISDICTION — "SPLITTING OFFENCES." — A court not having jurisdiction of an assault with intent to kill. cannot carve out of such major offence one of a lesser grade, such as an aggravated assault, and try that, for the reason that the conviction for such lesser offence is no protection in a subsequent trial for the higher offence. *Ex parte Brown*, 40 Fed. Rep. 81 (Ark).

EQUITY JURISDICTION — NUISANCE — INJUNCTION. — An injunction granted to restrain defendant from maintaining a nuisance, by keeping a place for the unlawful sale of intoxicating liquors, though not enforced, is a bar to a second action by another plaintiff seeking the same relief, where the record makes no showing why the first decree is not enforced. Granger and Beck, JJ , dissenting. *Dickenson* v. *Eichorn*, 43 N. W. Rep. 620 (Ia.).

EQUITY JURISDICTION — REFORMATION OF CONTRACTS — FRAUD. — The plaintiff claimed that, on account of a fraudulent misrepresentation by the agent of the defendant, a lot covered by an agreement for the sale of land was not included when the contract was reduced to writing. *Held*, that the point was immaterial, for an executory contract for the sale of land will not be reformed so as to make it include a larger quantity than is stated in the writing. *Davis* v. *Ely*, 10 S. E. Rep. 148 (N. C.).

EVIDENCE — ADVERSE WITNESS — RIGHT TO CROSS EXAMINATION. — A party to an action who calls an opponent as a witness has no right to cross-examine him, however hostile he may be, without the leave of the judge. Whether the witness is a litigant or not it is a matter of discretion with the judge whether he shows himself so hostile as to justify his cross-examination by the party calling him *Price* v. *Manning*, 42 Ch. D. 372 (Eng.).

The Court of Appeal here disapproves the dictum of Best, C. J, in *Clarke* v. *Saffery*, Ry. & M. 126, which is cited in 1 Greenleaf, Evidence, 484, as authority for the proposition that in such a case the witness may be cross-examined as a matter of right.

INSURANCE — TRANSFERS OF INSURED PROPERTY.—An insurance policy for the benefit of husband and wife jointly on property of the husband provided that any change in the title, unless with consent of the company at the home office, should violate the policy. *Held*, a transfer from the husband to his wife through a third person vitiated the policy. Evidence was not admissible that when the policy was issued the agent who solicited it was told of the proposed transfer, and orally agreed thereto. Bradley, Haight, and Brown, JJ., dissenting. *Walton et ux.* v. *Agricultural Ins. Co.*, 22 N. E. Rep. 443 (N. Y.).

PARTNERSHIP — SALE OF REALTY BY SURVIVING PARTNER. — Where the personal property of a firm is insufficient to pay its debts, a surviving partner may sell partnership real estate to pay them, and if he conveys in good faith, and for a valuable consideration, though without an order of court, he passes an equitable title; and the widow of the deceased partner, having received the proceeds of the sale left after paying firm debts, is estopped from claiming any interest in the realty, as against the purchasers and their vendees. *Waling et al.* v. *Burgess et al.*, 22 N. E. Rep. 419 (Ind.).

PATENTS — INJUNCTION TO PROTECT INVENTION USED ONLY FOR GAMBLING PURPOSES.—No injunction will be granted on a bill charging infringement of a patent if it appears that the only use to which the invention has been put is to gambling purposes. Such an invention is not a useful invention within the meaning of the patent laws of the United States, and it is no ground for an injunction that the invention *may* subserve some useful purpose. *National Automatic Device Co.* v. *Lloyd et al.*, 40 Fed. Rep. 89 (Ill.).

QUASI CONTRACT — DUTY IMPOSED BY STATUTE — STATUTE OF LIMITATIONS. —An action arising out of defendant's failure to perform a certain duty, in consequence of which plaintiff was compelled to perform it, is based on an implied assumpsit to which the statute of limitations, concerning actions on simple contracts, is applicable, and is not based on the statute, though the duty which the defendant failed to perform was statutory. *Metropolitan R. Co.* v. *District of Columbia*, 10 Sup. Ct. Rep 19.

REAL PROPERTY — CONVEYANCES IN FRAUD OF CREDITORS — The complainant seeks to set aside a voluntary conveyance made by his debtor to the defendant. Some of the debts were contracted before the conveyance, some afterwards. No actual intention to defraud was shown. *Held*, that the conveyance was fraudulent as against prior creditors, but good as regards subsequent debts; that it could be set aside for the purpose of paying prior debts; but that subsequent debts could not be paid out of the land. *Gardner* v. *Kleinke*, 18 Atl. Rep. 457 (N. J.).

It is the rule almost universally that if a conveyance is set aside at the instance of prior creditors, subsequent creditors may participate in the fund, although the conveyance was valid as regards them Bump, Fraudulent Conveyances (3d ed.), p. 324, and cases cited; Kerr, Fraud and Mistake (2d ed.), 181. *Ede* v. *Knowles*, 2 Y. & C. C. C 172. This rule must be supported on the ground of authority. On principle, the doctrine laid down in the principal case seems correct. *Williams* v. *Banks*, 11 Md. 198, *accord.*

REAL PROPERTY — COVENANT AGAINST INCUMBRANCES — MEASURE OF DAMAGES. — Only nominal damages can be recovered on a breach of a covenant against incumbrances, unless it appears that the plaintiff has extinguished the incumbrance. *Lane* v. *Richardson et al.*, 10 S E. Rep. 189 (N. C.).

REAL PPOPERTY — PERPETUITIES — ESTATE TO UNBORN CHILD OF UNBORN CHILD.— Under a power in a marriage settlement the estate was appointed to a child of the marriage for life, remainder in default of appointment by her to her children living at the date of the indenture of appointment. *Held*, that the re-

mainder was void. The rule applicable to legal limitations, that an estate cannot be limited to an unborn person for life, followed by an estate to any child of such unborn person, is an absolute rule independent of the rule against perpetuities. *Whitby* v. *Mitchell*, 42 Ch. D. 494 (Eng.).

Kay, J., adopts with approval the views of Mr. Joshua Williams on this much-disputed point. See Williams, Real Property (16th ed.), 314, 3 5. This seems to be the first decision in support of that view, and its correctness may, perhaps, be questioned. For a full discussion of the question, and statement of the reasons for the view that the Rule against Perpetuities is the only rule applicable to such a case, see Gray, Perpetuities, §§ 287–298.

SALE — DELIVERY — PAYMENT. — The vendor undertook to deliver iron of specific quality on board steamers at Liverpool, to be sent to the vendee at New York. There was no express contract in regard to inspection, but payment was to be made on receipt of the shipping documents. *Held*, the carrier is not the vendee's agent to accept the iron, but the right of inspection continues until the iron arrives in New York. Payment upon receipt of the shipping documents, but before inspecting and paying duties, does not prevent the vendee from denying acceptance, and he can recover the money thus paid. *Pierson et al.* v. *Crooks et al.*, 22 N. E. Rep. 349 (N. Y.).

SALE — DELIVERY — TENANCY IN COMMON OF HOMOGENEOUS ARTICLES. — Defendants, making application to the plaintiffs for the purchase of nuts, were informed that they were sold in bulk, by hectolitres, the purchaser to furnish bags on arrival of shipment. The defendants ordered 400 hectolitres. The delivery order was for 400 hectolitres of Brazil nuts in bulk, in separate hold. On presentation of the delivery order, it appeared that the 400 hectolitres destined for the defendants were included in a consignment, to several parties, of 582 hectolitres, which was the usual mode of shipping, though no custom, technically speaking, was proved. The defendants refused to separate or accept any of the nuts. *Held*, in an action for the contract price, that, in view of the fact that it was usual so to ship nuts, the delivery on board ship vested in the defendants title to 400–582 of the entire consignment, and that a tender of the total amount on arrival, for the defendants to separate their share, was a sufficient delivery. *Brownfield et al.* v. *Johnson et al.*, 18 Atl. Rep. 542 (Penn.).

This decision is on the authority of the grain-elevator cases, so called, where it is held that one who stores grain in an elevator becomes tenant in common *pro rata* with other depositors. It follows that when one depositor sells the whole or part of his grain, the vendee becomes the legal owner without separation of his part from the whole mass. This change in the common law arose from the modern methods of storage, and the general belief among merchants that they *owned* the grain so stored. The same reasoning applies to the principal case. The vendor undoubtedly believed that the nuts ceased to be his property on shipment, and there was a general usage of shipping different consignments in bulk to which the defendant must be taken to have assented. To give effect to this intention and usage, the doctrine of ownership in common has been adopted. For a discussion of this question see 6 Am. Law Rev. 450. Benjamin on Sales (Bennett's ed.), pp. 5 and 293.

SPECIFIC PERFORMANCE — ORAL LEASE — NOTICE TO SUBSEQUENT LESSEE. — Where tenants under a written lease make an oral agreement for a five years' lease, to begin at the end of the present term, and retain possession after the determination of the written lease, and make valuable permanent improvements on the faith of the agreement, this is sufficient part performance to take the agreement out of the statute of frauds, and warrant a decree for specific performance. This possession is sufficient notice of the tenants' rights as against one who has received a written lease of the premises, but who has paid no rent and expended no money under it. *Morrison et al.* v. *Herrick et al.* 22 N. E. Rep. 537 (Ill.).

TORT — STATUTORY ACTION FOR DEATH OF HUMAN BEING — MEASURE OF DAMAGES. — In a statutory action for pecuniary injury resulting from death by the defendants's negligence, a right of support by the deceased is not essential to the plaintiff's recovery. The measure of damages n an action by collateral kindred is the probable future increase of the property of the deceased, and when up to the time of his death in middle life he had accumulated no property, damages should be merely nominal. *Howard* v. *Delaware & H. Canal Co.*, 49 Fed. Rep. 195 (Vt.).